

19.08.2025

Present: Sh. RD Kaushik, Ld Counsel for plaintiff.
Sh. Ashok Kumar, and Ms. Vanshika, Ld. Counsels for defendant No. 1.
Defendant No. 2 already proceeded ex parte vide order dated 21.08.2024.

1. Arguments heard on pending application under Order VI Rule 17 CPC as filed on behalf of plaintiff.

2. By way of present application plaintiff is seeking amendment with respect to two additional relief i.e. preliminary decree of partition and decree of permanent injunction.

3. Ld. Counsel for plaintiff submits that due to some inadvertent mistake relief of preliminary decree of partition and permanent injunction was not sought earlier and since mistake was bonafide he may be permitted to amend the plaint.

4. *Per contra*, Ld. Counsel for defendant No. 1 vehemently opposed present application. It is submitted that present suit is itself not maintainable as defendant No. 1 is absolute owner of suit property by virtue of chain of document with effect from 28.06.1982 till 24.03.2001. It is further submitted that husband of defendant No. 1 initially purchased suit property along with defendant No. 2 qua 50% each. However, on 16.01.2001 defendant No. 2 transferred his 50% share to the husband of defendant No. 1. Resultantly, husband of defendant No. 1 become absolute owner of the suit property while on 24.03.2001 husband of

defendant No. 1 transferred absolute ownership qua suit property in favour of defendant No. 1 by virtue of GPA, ATS, Affidavit, Possession Letter, Will etc.

5. It is further submitted that on 02.07.2006 husband of defendant No. 1 also left for heavenly abode. Hence defendant No. 1 become absolute owner of suit property. It is further submitted that plaintiff is claiming 50% share of suit property by virtue of GPA, ATS, etc. purportedly executed by defendant No. 2 on 31.01.2017 i.e. after 16 years of execution of title document in favour of husband of defendant No. 1 by defendant No. 2. Hence, he does not have any right title or interest qua suit property and present application should be dismissed and suit shall also be dismissed.

6. It is well settled law that, where the amendment is sought before commencement of trial, the court is required to be liberal in its approach as the opposite party would have a chance to meet the case set up in amendment but, it shall not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment.

7. Hon'ble Supreme Court of India in *Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Anr*¹ after considering numerous precedents in regard to the amendment of pleadings, culled out certain principles:

' 70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

¹ [MANU/SC/1093/2022](#)

- (ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.*
- (iii) The prayer for amendment is to be allowed*
- (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and*
 - (ii) to avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side, (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*
 - (iv) A prayer for amendment is generally required to be allowed unless*
 - (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*
 - (ii) the amendment changes the nature of the suit,*
 - (iii) the prayer for amendment is malafide, or*
 - (iv) by the amendment, the other side loses a valid defence.*
 - (v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*
 - (vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*
 - (vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*
 - (viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*
 - (ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*
 - (x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which*

are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

- (xi) *Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)*

(emphasis is mine)

8. This Court carefully gone to the material placed on record as well as the submissions made by the parties is of the opinion that considering the overall facts and circumstances of the present case issues raised by defendant No. 1 are matter of trial for which separate issues are already framed. Hence, present application stands allowed subject to cost of Rs. 2500/- to be paid to the defendant No. 1 by plaintiff. Amended plaint is taken on record.

9. At this stage, Ld. Counsel for both parties submits that they adopt the pleadings already on record but since amendment is allowed additional issues may be framed.

10. In view thereof, following additional issues are framed:

Additional Issue No. 1: Whether present suit is not maintainable being lack of cause of action qua defendant No. 1? OPD1

Additional Issue No. 2: Whether plaintiff is entitled for decree of permanent

*injunction as prayed for? **OPP***

11. It is clarified that additional issues shall be the part and parcel of earlier issues are framed by this Court as order dated 23.01.2025.

12. **Reader is directed to endorse additional issues on order sheet dated 23.01.2025.**

13. For the purpose of clarification issues are reproduced as follows:

- i. *Whether plaintiff is entitled for decree of declaration as owner w.r.t half share (75 sq. yards) in the suit property i.e. half constructed house bearing Old No. 10-B and New no. 829, G Block, Gali No. 17, Area admeasuring 150 sq. yards, part of khasra No. 49/5/2. 52/1/1 consists of two room, toilet, kitchen situated in Raj Nagar, Part II, Palam Colony total admeasuring 150 sq. yards? **OPP.***
- ii. *Whether present suit is barred being lack of cause of action qua defendant No. 1? **OPD1.***
- iii. *Whether present suit is barred due to misjoinder of the parties as defendant No. 1 has no connection with the plaintiff? **OPD1***
- iv. *Whether the present suit is barred as filed in collusion of defendant No. 2? **OPD-1***
- v. *Whether present suit is to be dismissed due to deficient court fees, as plaintiff is not in possession of the suit property? **OPD-1***
- vi. *Whether plaintiff is entitled for preliminary decree of partition qua the suit*

- property, as prayed for? **OPP***
- vii. *Whether plaintiff is entitled for final decree of partition qua the suit property as prayed for? **OPP***
- viii. *Whether plaintiff is entitled for decree of permanent injunction as prayed for? **OPP***
- ix. *Whether plaintiff is entitled for the cost of the suit? **OPP**.*
- x. *Relief.*

14. Put up for PE on 29.11.2025.

(SHILPI M JAIN)
DJ-05 (SW)/Dwarka Courts
New Delhi: 19.08.2025 (GM)